POLICY GUIDANCE REGARDING INQUIRIES INTO CITIZENSHIP, IMMIGRATION STATUS AND SOCIAL SECURITY NUMBERS IN STATE APPLICATIONS FOR MEDICAID, STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND FOOD STAMP BENEFITS

QUESTIONS AND ANSWERS

1. Question: What is the purpose of the guidance letter and this set of Questions and Answers (Qs&As) released on [insert date] by the Department of Health and Human Services (HHS) and the Department of Agriculture?

Answer: The Administration for Children and Families (ACF), the Health Care Financing Administration (HCFA), the Office for Civil Rights (OCR) of the Department of Health and Human Services, and the Food and Nutrition Service (FNS) of the Department of Agriculture sent the guidance letter and this set of Questions and Answers (Qs&As) to all state welfare and health officials. Together, they inform states and others about when a state is required to request information about citizenship or immigration status, and social security numbers (SSNs) on joint and single-program applications, and the circumstances under which a state may or may not deny benefits when an applicant does not provide the information that the state has requested.

The purpose of the guidance letter and these Qs&As is to assist states in modifying their application forms and processes so that eligible individuals will have equal access to assistance and will not be deterred from seeking benefits. Recommendations are included to help states modify their application forms to be consistent with the requirements and principles explained in the guidance letter and the Qs&As.

2. Question: How does the Privacy Act relate to this issue?

Answer: The Privacy Act of 1974, § 7(a), generally prohibits states from requiring individuals to disclose their social security number (SSN) unless one or both of the following circumstances apply:

- it is required by federal statute; or
- the state has a system of records in place that was operating before January 1, 1975 and disclosure of the SSN was required under a statute or regulation adopted prior to this date.

Federal statutes require that applicants for and recipients of Medicaid, Medicaid expansion programs under SCHIP,[1] TANF, and Food Stamp benefits furnish their SSNs. However, in order to avoid potential violations of the Privacy Act, states should not require non-applicants to disclose their SSNs as a condition of applicants' eligibility for these benefits. Also, there is no federal statute that authorizes states to require the disclosure of SSNs as a condition of eligibility for separate child health programs under SCHIP. Therefore, current policy implementing such programs prohibits states from requiring applicants and non-applicant household members to disclose their SSNs as a condition of eligibility under a separate child health program.

Where a state is not authorized to *require* an individual to disclose his or her SSN, a state may request that the individual voluntarily provide an SSN. However, any time a state agency requests that an individual disclose his or her SSN, the Privacy Act of 1974, §7(b), requires the agency to inform the individual:

- whether that disclosure is voluntary or mandatory,
- by what statutory or other authority such number is solicited, and
- what uses will be made of it.

3. Question: What are the rules for Medicaid, including a Medicaid expansion under SCHIP, with respect to questions regarding citizenship, immigration status, and social security number information on state applications?

Answer:

Citizenship/Immigration Status: States must require disclosure of the citizenship or immigration status *only* of the person or persons for whom Medicaid benefits are being sought (i.e., the applicant(s)). (Social Security Act § 1137(d); 42 U.S.C. § 1320b-7(d)). For example, if a parent applies for Medicaid on behalf of his or her child, the citizenship or immigration status of the parent (or other household members) is irrelevant to the child's eligibility, and the state may not require that parents disclose the information**.** As noted in Question 11 below, even

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[1]Benefits can be provided to children under SCHIP either through Medicaid or through the establishment of a separate state program. Programs using enhanced federal funding available under SCHIP to provide eligible children with benefits through the Medicaid program are referred to as "Medicaid expansion programs," and the rules governing the Medicaid program apply equally to them. SCHIP programs which offer benefits under a separate, state-operated program are referred to as "separate child health programs." Separate child health programs are distinct from Medicaid, and they are subject to different rules.

asking non-applicants to disclose such information, without stating clearly that this information is not required, raises concerns under Title VI of the Civil Rights Act of 1964, if the effect is to deter otherwise eligible applicants who are protected against discrimination by Title VI from applying for benefits.

States *may not* deny benefits because the applicant (or a person acting on behalf of the applicant) did not certify or document the citizenship or immigration status of persons in the applicant's household for whom benefits are not being sought.

These same rules apply to Medicaid expansion programs under SCHIP.

Social Security Numbers (SSNs): States must require the disclosure of SSNs only for applicants and recipients of Medicaid benefits (Social Security Act § 1137(a); 42 U.S.C. § 1320b-7(a)). If an SSN has not been issued, states must assist individuals to apply for one. (42 C.F.R. § 435.910(e)). States can ask non-applicants for an SSN but only if they clearly indicate that provision of this information is voluntary, and if they indicate how the information will be used.

States *may not* deny benefits because the applicant did not provide the SSNs of persons who are neither applicants for nor recipients of Medicaid or SCHIP (Medicaid expansion program) benefits.

Again, the same rules apply to Medicaid expansion programs under SCHIP.

4. Question: What are the rules for *emergency* Medicaid services?

Answer: Special rules apply to Medicaid coverage for emergency services. Emergency Medicaid coverage is limited to treatment required after the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in -- (A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part.

Citizenship and Immigration Status: If a non-citizen, who is not eligible for regular Medicaid, qualifies for emergency Medicaid coverage, by law, the applicant is not required to declare or provide proof of his or her immigration status. States may not deny benefits based on an applicant's failure (or that of a person acting on behalf of the applicant) to certify or document his or her citizenship or immigration status or the citizenship or immigration status of any other person or persons in the

applicant's household. (Social Security Act § 1137(f); 42 U.S.C. § 1320b-7(f)).

Social Security Numbers (SSNs): If a non-citizen, who is not eligible for regular Medicaid, qualifies for emergency Medicaid coverage, the applicant cannot be required to provide an SSN. States may ask for an SSN if they clearly inform the applicant that provision of this information is voluntary, and if they state how the information will be used. States may not deny emergency Medicaid benefits because a non-citizen does not provide his or her SSN or the SSN of anyone else in the applicant's household. (Social Security Act § 1137(f); 42 U.S.C. § 1320b-7(f)).

5. Question: What are the rules for separate child health programs under SCHIP with respect to questions regarding citizenship, immigration status, and social security number information on state applications?

Answer:

Citizenship/Immigration Status: States must require disclosure of the citizenship or immigration status only of the person or persons for whom benefits are being sought (i.e., the applicant(s)). For example, if a parent applies for benefits under a separate child health program on behalf of his or her child, the citizenship or immigration status of the parent (or other household members) is irrelevant to the child's eligibility, and the state may not require that parents disclose this information.

States *may not* deny benefits because the applicant (or a person acting on behalf of the applicant) did not certify or document the citizenship or immigration status of persons in the applicant's household for whom benefits are not being sought.

Social Security Numbers (SSNs): States may not require the disclosure of the child's or any other person's SSN because there is no federal law that permits them to do so. States can ask for the child applicant's or parent's SSN but only if they clearly indicate that provision of this information is voluntary, and if they indicate how the information will be used.

States *may not* deny benefits because the applicant did not provide his or her, or any other person's, SSN.

6. Question: What are the rules for Food Stamps with respect to questions regarding citizenship, immigration status, and social security number information on state applications?

Answer:

Citizenship/Immigration Status: Food Stamp eligibility and benefits are based on the circumstances of *all* household members (generally, an individual or a group of individuals who live together and purchase and prepare meals together). All household members must declare their citizenship or establish satisfactory immigration status. (Social Security Act § 1137(d); 42 U.S.C. § 1320b-7(d)). Under long-standing policy, when a household member does not disclose his or her citizenship or establish satisfactory immigration status, the state agency determines that household member ineligible for benefits. The state agency cannot deny benefits to eligible citizen or immigrant household members simply because other household members fail to disclose their citizenship or establish satisfactory immigration status.

This guidance gives state agencies the option to permit individual household members to declare early in the application process that they are not applying for Food Stamps, and therefore, they will not need to disclose their citizenship or establish their immigration status. States may consider such individuals "non-applicants." We encourage state agencies to adopt this option. state agencies that do adopt it should advise household members at the beginning of the application process that 1) only those who disclose their citizenship or establish satisfactory immigration status will receive benefits if otherwise eligible, and 2) "non-applicant" household members are still required to answer questions that affect the eligibility of the "applicant" household members, such as information on income, resources, striker status, and intentional Program violations (IPVs). State agencies must consider the income and resources of all "non-applicant" household members when determining the household's eligibility and benefit level. Again, state agencies cannot deny benefits to otherwise eligible household members simply because other members have chosen not to disclose their citizenship or establish satisfactory immigration status.

Social Security Numbers (SSNs): When a household seeks Food Stamp benefits, each household member as a condition of eligibility must provide the state agency with an SSN, or apply for one, if one has not been issued. (Social Security Act § 1137(a); 42 U.S.C. § 1320b-7(a)). Under long standing policy, when a household member does not provide or apply for an SSN, the state agency determines him or her ineligible for benefits. State agencies cannot deny benefits to otherwise eligible household members simply because other household members fail to provide or apply for an SSN.

This guidance gives state agencies the option to permit individual household members to declare early in the application process that they are not applying for Food Stamps, and therefore, they need not provide or apply for an SSN. States may consider such individuals "non-applicants." States that elect this option should advise household members at the beginning of the application

process that 1) only those who do provide or apply for an SSN will receive benefits if otherwise eligible, and 2) "non-applicant" household members are still required to provide other information that may affect the eligibility of the "applicant" household members such as income, resources, striker status, etc. State agencies must consider the income and resources of all "non-applicant" household members when determining the household's eligibility and benefit level. Again, state agencies may not deny benefits to otherwise eligible household members simply because other household members have chosen not to provide or apply for an SSN.

7. Question: What are the rules for TANF with respect to questions regarding citizenship, immigration status, and Social Security number information on state applications?

Answer:

Citizenship/Immigration Status: As a general rule, TANF eligibility and benefits are based on the circumstances of the family, as defined by the state, and each member of that family must disclose his or her citizenship or immigration status as a condition of the family's eligibility for TANF benefits. (Social Security Act § 1137(d); 42 U.S.C. § 1320b-7(d)). However, because states have considerable flexibility in TANF, states may elect to have policies that provide for the mandatory or voluntary exclusion of family members. In such circumstances, once the family member is determined to be ineligible or not to be part of the applicant family, he or she is "excluded" and is no longer considered an applicant. For example, under current practice, states have "child-only" rules that allow needy children to receive TANF benefits even if other family members are ineligible (e.g., because they are fugitive felons or unqualified immigrants, or qualified immigrants who are barred from participation in federal means-tested public benefit programs under PRWORA). Thus, in a child-only case, the failure of the person completing the application to certify or document that anyone other than the child is a U.S. citizen or qualified immigrant would not be grounds to delay or deny TANF benefits to that child.

While state policies such as "child-only" rules ensure that eligible family members receive TANF benefits even when other family members are excluded, the process used to exclude ineligible family members may deter eligible applicants in immigrant families from applying for TANF benefits. This is because families might fear that information provided on the forms about ineligible family members could be shared with INS. States have considerable flexibility to develop their own TANF application forms, policies, and procedures to address this barrier, including the flexibility to allow certain family members to designate themselves as non-applicants on the initial application form. As non-applicants, family members would not be required to disclose their citizenship or immigration status. However, states may require non-applicants to answer other questions on the application that relate to the family's financial circumstances or other eligibility factors.

Social Security Numbers (SSNs): Applicants for and recipients of TANF benefits are required to disclose their SSNs as a condition of eligibility (Social Security Act § 1137(a); 42 U.S.C. § 1320b-7(a)). If an SSN has not been issued, states must assist individuals to apply for one. (45 C.F.R. § 205.52).

As noted above, although TANF eligibility and benefits generally are based on the circumstances of the family unit, as defined by the state, states have flexibility to allow certain family members to designate themselves as non-applicants on the initial application form. The state is not required to obtain an SSN of a non-applicant. States may ask non-applicants for an SSN, but in order to avoid potential violations of the Privacy Act, states must clearly indicate that provision of this information is voluntary, and they must indicate how the information will be used. Of course, states may require non-applicants to answer other questions on the application that relate to the family's financial circumstances or other eligibility factors.

8. Question: Are these new policies?

Answer: This guidance builds on and is consistent with earlier efforts of the Administration to ensure access to needed services for all eligible individuals and families, including children and adults who live in immigrant families.

This guidance allows states to design their single and joint program application forms to eliminate the need for all family or household members to respond to questions about citizenship and immigration status and to disclose their SSNs. These questions have been found to deter eligible individuals in immigrant families -- including many U.S.-born citizen children -- from seeking benefits. The guidance and Qs&As make clear when states can and cannot require disclosure of citizenship, immigration status and SSNs in Medicaid, SCHIP, TANF and Food Stamps. It also makes clear that, in Medicaid, SCHIP and Food Stamps, states cannot deny benefits to otherwise eligible family or household members because other family or household members have failed to disclose their immigration status or provide an SSN. In TANF, states have the flexibility to adopt policies and procedures to ensure that eligible family members are not denied benefits because ineligible family members do not disclose this information. This guidance is new in Food Stamps, although it is consistent with long-standing interpretations of law. We are addressing this policy in TANF for the first time. For Medicaid and SCHIP, this guidance reiterates and expounds upon earlier HCFA policy issuances. (See e.g., HCFA SMD letter, September 10, 1998; State Child Health; Implementing Regulations for the State Children's Health Insurance Program, Proposed Rule, 64 Fed. Reg. 60882, 60951 (November 8, 1999)).

9. Question: Will these policies restrict states' abilities to verify income and combat fraud?

Answer: No. We understand the importance of using available tools, such as data matches, to verify income, eliminate eligibility errors and combat fraud, and we support state efforts to use these tools and others to achieve these goals appropriately.

In pursuing these goals, however, we want to ensure that states do not violate existing laws and regulations, especially if these violations inappropriately discourage eligible individuals in immigrant families, such as children, from seeking needed assistance.

States will not be out of compliance with the Income and Eligibility Verification System in the Medicaid and TANF programs if they do not obtain the SSN of non-applicants or, in the case of TANF, persons who are not applicants because they have been excluded from the family (e.g., because their immigration status makes them ineligible for TANF benefits). States may use alternatives to the SSN to verify non-applicant income and resources when determining eligibility and benefit levels of applicants.

However, states may ask non-applicant family members to voluntarily provide SSNs, as long as they indicate that compliance is voluntary, and indicate what they will be doing with the SSN. State experience suggests very high reporting rates when individuals are asked to provide SSNs voluntarily. We believe that states and local agencies can alleviate most of the fears of immigrant family members, and enhance voluntary compliance with SSN requests, by clearly stating that SSNs will be used only to verify income and for other purposes related to program administration. (See Recommendation No. 3 in Letter).

10. Question: May states continue to use application forms that combine applications for different benefit programs?

Answer: Absolutely. It is entirely appropriate to use joint applications. Most states have consolidated their application forms and use joint applications for Medicaid, SCHIP, TANF, Food Stamps and other benefits.

HHS and USDA encourage the use of joint applications because they can eliminate duplication of effort for both states and applicants, and they help increase program participation by ensuring that applicants receive all benefits they are entitled to, not just benefits for which they had originally intended to apply. But questions about the citizenship, immigration status, or SSNs of non-applicants must not result in eligible persons losing access to assistance.

Our guidance is designed to help states improve their joint applications by clarifying the flexibility they have under the TANF and Food Stamp programs to limit questions about SSNs and citizenship/immigration status to "applicants" (i.e, those who will actually be receiving assistance as a member of the family or household eligibility unit) and not to others in the family or household who are not "applying" for assistance. Thus, for TANF and Food Stamps, states now may ask for information about applicants' citizenship, immigration status and SSNs using the approach already used by many states in their separate Medicaid and SCHIP applications. This flexibility should greatly enhance the ability of states to develop joint applications that are effective and efficient for state administrative purposes. It also should ensure that all eligible persons in immigrant families receive the assistance for which they are eligible or to which they are entitled.

Our guidance also reminds states that as a condition of eligibility under the current Medicaid, SCHIP (Medicaid expansion and separate child health programs), and Food Stamp programs, applicants cannot be required to furnish the SSNs or citizenship/immigration status of other family or household members who are unable or unwilling to do so. We are concerned that this important principle may not be adequately reflected in states' current joint applications.

The guidance provides several suggestions to states regarding how they can approach modifying their joint applications, and how they can educate both applicants and eligibility workers regarding questions related to SSNs and citizenship/immigration status. We also have provided states with a sample Notice to Applicants that may be helpful in informing applicants of the SSN and citizenship/immigration information they need to provide.

11. Question: Are there any civil rights issues involved in how states ask about citizenship, immigration status and SSNs when determining eligibility for public benefits?

Answer: Potentially yes. The answer depends on whether such inquiries have a discriminatory effect on people whose rights are protected by Title VI. Title VI of the Civil Rights Act of 1964, and its implementing regulation, prohibit entities receiving federal funds, such as states, from discriminating against any person on the basis of that person's race, color, or national origin. Title VI covers both intentional acts and facially neutral policies and actions that have an adverse impact based on race, color or national origin.

For example, some application forms require an applicant (or someone acting on the applicant's behalf) to certify under penalty of perjury that each person in the applicant's household is a U.S. citizen or immigrant in lawful immigration status. In situations where the immigration status of other household members has no bearing on an applicant's eligibility, such as when a U.S. citizen child lives with a non-qualified immigrant parent or other family member and applies for

Medicaid, requiring such certification is likely to deter or prevent the eligible applicant from applying for or receiving public benefits. In this example, because the eligible applicants most likely to be deterred from completing an application form will be those of certain national origins, serious concerns under the Title VI regulations would be raised. This is because these regulations prohibit policies and practices that have the effect of denying or restricting access to programs and services that receive federal funds for people who are protected under Title VI because of their race, color or national origin. Even *asking* non-applicants to disclose information about their citizenship or immigration status, without stating clearly that this information is not required, raises Title VI concerns if the effect is to deter otherwise eligible applicants who are protected against discrimination by Title VI from applying for benefits.

12. Question: What about other programs that may be included on joint applications?

Answer: The statutes and regulations that pertain to other federal and state programs need to be reviewed to determine the appropriateness of citizenship, immigration status, and SSN inquiries. However, we did not want to delay the issuance of this information, which pertains to the programs that most states include in joint applications.

As a general rule, states may only require that an applicant provide information about citizenship or immigration status if the program's authorizing statute otherwise limits eligibility based on citizenship or immigration status, or if the program provides a federal, state or local public benefit. (See, 63 Fed. Reg. 41658 (Aug. 4, 1998) for a list of HHS programs that provide federal public benefits). Certain federal, state and local public benefit programs have no such limitations.

It should be noted that in the administration of state general public assistance programs, states may, but are not required to, obtain social security numbers. (Social Security Act § 205(c)(2)(C); 42 U.S.C. § 405(c)(2)(C)).

States and local offices should alert the appropriate federal regional offices as to other programs about which they have questions.

13. Question: How does this guidance relate to the state Medicaid reviews HCFA has conducted?

Answer: HCFA, working in collaboration with other HHS components, has been reviewing Medicaid eligibility forms and processes in all states. Many of the same issues addressed in this guidance were examined in that review. Even though the issues addressed in this guidance are only a relatively small part of the more general review, this detailed guidance is consistent with

that review, and it will ensure more appropriate eligibility outcomes for Medicaid as well as the other enumerated programs of concern. This guidance is also consistent with the September 10, 1998, HCFA letter to all state health officials, which addressed application and enrollment simplification, and clarified Medicaid and SCHIP requirements relating to the provision of SSNs and establishment of citizenship and immigration status.

HCFA expects its review process to be an on-going effort in partnership with states to ensure compliance with all the requirements and realization of the opportunities offered by welfare reform, including the principles in this letter.

If a state Medicaid review discloses potential problems with state compliance with TANF or Food Stamp requirements, these issues will be referred to the appropriate federal officials for further review and follow-up.

14. Question: What funds exist to help states revise their applications?

Answer: The costs of revising application forms are reimbursable as an allowable administrative expense under existing program rules, including cost allocation requirements. In addition, Congress established a special $500 million fund to help states with additional Medicaid administrative expenses associated with implementation of the new Medicaid eligibility rules for low-income families under the welfare reform legislation (Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)). Under legislation enacted on November 29, 1999, most states remain eligible to draw down their allotments. While these funds can be used for a wide range of activities, HCFA previously has advised states that the cost of designing and redesigning eligibility forms is an allowable expense eligible for federal matching funds at an enhanced rate of 75 percent. **(For additional information about the $500 million fund, see HCFA SMD Letter, January 6, 2000).** States may also use federal TANF funds to support the redesign of application forms, and they may claim the expenditure of state funds for this purpose under the TANF maintenance of effort provision. Such expenditures would be subject to the 15 percent **TANF** administrative cap that apply separately to federal and state administrative costs.

15. Question: Is there a sample notice for states to give to applicants to accompany their joint applications while they are revising them?

Answer: Yes. We look forward to working with states to promptly review and modify their application forms and procedures to reflect the principles of this guidance. In the meantime, attached is a sample notice that states can use while they are revising their joint application forms. The sample notice can serve as a template for states to use as a guideline in creating their

own notice according to state-specific policies. We strongly encourage states to ensure that their notices are written at an appropriate literacy level, convey the information in a simple way (such as a reader-friendly bullet list format), and are translated into as many different foreign languages as necessary in accordance with the HHS "Policy Guidance on the TitleVI Prohibition Against National Origin Discrimination as It Affects Persons with Limited English Proficiency."